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09/446,807	10/02/2000	Larry W. Depoorter	D-42716-01	2936

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Cryovac Inc  
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Duncan, SC 29334

EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/446,807

Applicant(s)

DEPOORTER ET AL.

Examiner

Marc A Patterson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/8/04.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 112 second paragraph rejections of Claims 1 – 13, of record on page 2 of the previous Action, is withdrawn.

### **REPEATED REJECTIONS**

2. The 35 U.S.C. 102(b) rejection of Claims 1 – 3 and 5 – 12 as being anticipated by Brady et al (WO96/00688), of record on page 2 of the previous Action, is repeated.

The 35 U.S.C. 103(a) rejection of Claim 13 as being unpatentable over Brady et al (WO96/00688), of record on page 5 of the previous Action, is repeated.

The 35 U.S.C. 103(a) rejection of Claim 4 as being unpatentable over Brady et al (WO96/00688) in view of Herrington (U.S. Patent No. 4,561,109), of record on page 5 of the previous Action, is repeated.

The 35 U.S.C. 103(a) rejection of Claim 14 – 15, 17 and 19 – 22 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004), of record on page 5 of the previous Action, is repeated.

The 35 U.S.C. 103(a) rejection of Claims 16, 18 and 21 – 23 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and further in view of Shabram (U.S. Patent No. 3,340,776), of record on page 7 of the previous Action, is repeated.

### ANSWERS TO APPLICANT'S ARGUMENTS

3. Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejections of Claims 1 – 13, of record in the previous Action, have been considered and have been found to be persuasive. The rejection is therefore withdrawn.

Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1 – 3 and 5 – 12 as being anticipated by Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 13 as being unpatentable over Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 4 as being unpatentable over Brady et al (WO96/00688) in view of Herrington (U.S. Patent No. 4,561,109), 35 U.S.C. 103(a) rejection of Claim 14 – 15, 17 and 19 – 22 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004), 35 U.S.C. 103(a) rejection of Claims 16, 18 and 21 – 23 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and further in view of Shabram (U.S. Patent No. 3,340,776), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

#### I. The Pending Claims and the Amendments to the Claims

Applicant argues, on page 9, that the amendment to Claim 1 which deletes the word 'both,' contains no new matter and that the 35 U.S.C. 112 second paragraph rejections of Claims 1 – 13 should be withdrawn as a result of the amendment. As stated above, Applicant's arguments, have been considered and have been found to be persuasive. The rejection is therefore withdrawn.

## II. The 102(b) Rejection of Claims 1 – 3 and 5 – 12 and Anticipated by Brady et al

Applicant argues, on page 10 of Paper No. 22, that Brady et al fails to disclose a seal which is the only seal across the bag, because Brady et al disclose a supplemental seal as well as a bottom seal.

However, Brady et al teaches that the supplemental seal is an additional feature (page 19, lines 15 – 16), which is clearly optional in the making of the bag. Brady et al therefore disclose a bottom seal which is disclosed the only seal across the bag.

Applicant also argues, on page 11, that one of ordinary skill in the art would not be motivated to seal through the patch of Brady et al, because Brady et al teach that sealing through the patch produces a seal of inferior strength and therefore teaches against sealing through the patch.

However, Brady et al does not teach that the seal which is produced by sealing through the patches is inferior; Brady et al only state that sealing through the patches produces a patch which is not as strong as a patch which is only made through the bag (page 19, lines 11 – 14). As stated on page 2 of the previous Action, the statement is an acknowledgement that sealing through the patches is well known in the art, and is used for the purpose of making the bag, but that sealing through the bag alone is preferable.

Applicant also argues, on page 12, that Brady et al does not disclose a bag having a seal strength which allows 26 inches of water to be maintained inside the bag, and that additionally, Brady et al teach that the seal through the patches will be 'weak,' which is the same as suggesting that the bag will not possess the pressure – to – burst necessary to maintain 26 inches of water.

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However, 26 inches of water is not claimed as a pressure – to – burst, but as the burst strength of the bag. As stated on page 2 of the previous Action, the claimed strength is indefinite because inches are not a known measure of strength. Furthermore, the size of the bag which contains the 26 inches is not claimed, or discussed in the specification, so that it is unclear what volume and weight of water the 26 inches of water corresponds to, or what pressure it corresponds to. The strength of the bag is therefore not clear from the claims or specification, and is assumed to be any strength for purposes of examination. Brady et al also does not teach that sealing through the patches will produce a patch which is 'weak'; it is only taught that the seal will not be as strong as a seal which is through the bag alone.

Applicant also argues, on page 13, that in the present specification, it is disclosed that sealing through patches produces a seal strength of only 16 to 20 inches unless the bag is made through the process of the present invention.

However, as stated above, it is unclear what seal strength is defined by '16 to 20 inches.'

Applicant also argues that the previous Action, states that Brady et al discloses a width of the seal taught by Brady et al as 13 – 17 inches, but that 13 – 17 inches is actually the length of the bag.

However, as stated, on page 2 of the previous Action, 13 – 17 inches is clearly the width of the bag which is taught by Brady et al (page 1, lines 28 – 30); the seal of Brady et al must therefore have a width of less than 13 – 17 inches.

### III. The Rejection of Claim 13 as Obvious over BRADY et al

Applicant also argues on page 13 that the previous Action states that Brady et al discloses a width of the seal taught by Brady et al as 13 – 17 inches, but that 13 – 17 inches is actually the length of the bag.

However, as stated, on page 2 of the previous Action, 13 – 17 inches is clearly the width of the bag which is taught by Brady et al (page 1, lines 28 – 30); the seal of Brady et al must therefore have a width of less than 13 – 17 inches.

### IV. The Rejection of Claim 4 as Obvious over BRADY et al in view of HERRINGTON

Applicant also argues on page 15 that Claim 4 is patentable over Brady et al for the same reasons as Claim 1 above, and that additionally, Herrington is unnecessary in Brady et al because the bottom of Brady et al is folded.

In response to the argument that Claim 4 is patentable over Brady et al for the same reasons as Claim 1 above, the arguments for Claim 1 above are repeated. Furthermore, it is unclear where folding is taught by Brady et al.

### V. The Rejection of Claims 14 – 15, 17 and 19 – 22 as Obvious over BRADY et al in view of SAMSON

Applicant also argues, on page 16, that Samson teaches the method and apparatus employed the purpose of making a uniform and high strength seal of films which are built up of two or more alternating layers of different thermoplastic component polymers having different softening points.

However, Samson et al does not teach that the method disclosed is limited only to film containing alternating layers of high and low melting point polymers or polymers having

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different softening points; as stated on page 6 of the previous Action, Samson teaches a method of sealing films (column 1, lines 20 – 30) which comprises applying heat by a first and second means for heating (jaws; column 2, lines 33 – 38), the first and second means for heating being in alignment (the jaws are forced together; column 2, lines 33 – 38); with the films therebetween during sealing (column 2, lines 33 – 38) for the purpose of sealing films with strength and uniformity (column 1, lines 4 – 11). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the method of Samson et al in Brady et al, which is a sealable film, depending on the desired strength and uniformity of the end product as taught by Samson et al

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for disclose heat which is applied by a first means for heating and second means for heating, the first and second means for heating being in alignment with one another, with the patches and bag tubing therebetween during sealing in Brady et al in order to seal the films with strength and uniformity as taught by Samson et al.

Applicant also argues, on page 18, that after reading the claims and specification of Samson which state that a strong seal is made by first heating to the softening point of the lowest melting point component and then raising the temperature of the seal bars to the softening point of the highest melting component, one of ordinary skill in the art would not be motivated to apply the method or apparatus of Samson to produce a through – the – patch seal of Brady et al, because neither the patch film nor the bag film in Brady et al contain alternating layers of high and low melting point polymers or polymers having different softening points; the films are olefin – based, Applicant states, and therefore the layers have relatively low melting points.



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However, as stated above, Samson et al does not teach that the method disclosed is limited only to film containing alternating layers of high and low melting point polymers or polymers having different softening points; as stated on page 6 of the previous Action, Samson teaches a method of sealing films (column 1, lines 20 – 30) which comprises applying heat by a first and second means for heating (jaws; column 2, lines 33 – 38), the first and second means for heating being in alignment (the jaws are forced together; column 2, lines 33 – 38); with the films therebetween during sealing (column 2, lines 33 – 38) for the purpose of sealing films with strength and uniformity (column 1, lines 4 – 11). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the method of Samson et al in Brady et al, which is a sealable film, depending on the desired strength and uniformity of the end product as taught by Samson et al

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for disclose heat which is applied by a first means for heating and second means for heating, the first and second means for heating being in alignment with one another, with the patches and bag tubing therebetween during sealing in Brady et al in order to seal the films with strength and uniformity as taught by Samson et al.

VI. The Rejection of Claims 16, 18 and 21 – 23 as Obvious over Brady et al in view of  
SAMSON and further in view of SHABRAM

Applicant also argues, on page 19, that Claims 16, 18 and 21 – 23 are patentable over Claims 19 for the same reasons as Claims 14 – 15.

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In response to the argument that that Claims 16, 18 and 21 – 23 are patentable over Claims 19 for the same reasons as Claims 14 – 15, the arguments with regard to Claims 14 – 15 above are repeated.

Applicant also argues, on page 20, that Shabram fails to disclose a seal bar having a convex surface.

However, the sealing bar disclosed by Shabram clearly comprises convex V – shaped members near the end of each bar (column 4, lines 32 – 33) and therefore comprises a convex surface.

Applicant also argues on page 20 that it would not have been obvious for one of ordinary skill in the art to optimize the temperature and pressure of Samson et al to arrive at Applicant's temperature and pressure, because of the stated differences between the films disclosed by Samson et al and the films taught by Brady et al.

However, as stated above, Samson et al does not teach that the method disclosed is limited only to film containing alternating layers of high and low melting point polymers or polymers having different softening points. Furthermore, as stated on page 6 of the previous Action, the method taught by Samson et al is used for the purpose of sealing films with strength and uniformity (column 1, lines 4 – 11). Therefore, one of ordinary skill in the art would have recognized the utility of varying the temperature and pressure of sealing to obtain a desired range of strength and uniformity. Therefore, strength and uniformity would be readily determined through routine optimization of temperature and pressure by one having ordinary skill in the art depending on the desired end use of the product as taught by Samson et al.

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It therefore would be obvious for one of ordinary skill in the art to vary the thickness in order to obtain a desired strength and uniformity, since the strength and uniformity would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Samson et al.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### ***Conclusion***


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 - 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold

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Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

5/1/04